

to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, must also show:

[45 FR 17972, Mar. 20, 1980, as amended by Order 478, 52 FR 28467, July 30, 1987; Order 575, 60 FR 4857, Jan. 25, 1995; Order 671, 71 FR 7868, Feb. 15, 2006; Order 732, 75 FR 15966, Mar. 30, 2010]

§ 292.207 Procedures for obtaining qualifying status.

(a) *Self-certification.* The qualifying facility status of an existing or a proposed facility that meets the requirements of § 292.203 may be self-certified by the owner or operator of the facility or its representative by properly completing a Form No. 556 and filing that form with the Commission, pursuant to § 131.80 of this chapter, and complying with paragraph (c) of this section.

(b) *Optional procedure—(1) Application for Commission certification.* In lieu of the self-certification procedures in paragraph (a) of this section, an owner or operator of an existing or a proposed facility, or its representative, may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by part 381 of this chapter, and the applicant for Commission certification must comply with paragraph (c) of this section.

(2) *General contents of application.* The application must include a properly completed Form No. 556 pursuant to § 131.80 of this chapter.

(3) *Commission action.* (i) Within 90 days of the later of the filing of an application or the filing of a supplement, amendment or other change to the application, the Commission will either: Inform the applicant that the application is deficient; or issue an order granting or denying the application; or toll the time for issuance of an order. Any order denying certification shall identify the specific requirements which were not met. If the Commission does not act within 90 days of the date of the latest filing, the application shall be deemed to have been granted.

(ii) For purposes of paragraph (b) of this section, the date an application is filed is the date by which the Office of the Secretary has received all of the information and the appropriate filing

fee necessary to comply with the requirements of this Part.

(c) *Notice requirements—(1) General.* An applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification of the qualifying status of its facility must concurrently serve a copy of such filing on each electric utility with which it expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up or maintenance power from, and the State regulatory authority of each state where the facility and each affected electric utility is located. The Commission will publish a notice in the FEDERAL REGISTER for each application for Commission certification and for each self-certification of a cogeneration facility that is subject to the requirements of § 292.205(d).

(2) *Facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility notifies the facility that it is a qualifying facility or 90 days after the utility meets the notice requirements in paragraph (c)(1) of this section.

(d) *Revocation of qualifying status.* (1)(i) If a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the notice of self-certification or Commission order certifying the qualifying status of the facility may no longer be relied upon. At that point, if the facility continues to conform to the Commission's qualifying criteria under this part, the cogenerator or small power producer may file either a notice of self-recertification of qualifying status pursuant to the requirements of paragraph (a) of this section, or an application for Commission recertification pursuant to the requirements of paragraph (b) of this section, as appropriate.

(ii) The Commission may, on its own motion or on the motion of any person, revoke the qualifying status of a facility that has been certified under paragraph (b) of this section, if the facility

fails to conform to any of the Commission's qualifying facility criteria under this part.

(iii) The Commission may, on its own motion or on the motion of any person, revoke the qualifying status of a self-certified or self-recertified qualifying facility if it finds that the self-certified or self-recertified qualifying facility does not meet the applicable requirements for qualifying facilities.

(2) Prior to undertaking any substantial alteration or modification of a qualifying facility which has been certified under paragraph (b) of this section, a small power producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status. This application for Commission recertification of qualifying status should be submitted in accordance with paragraph (b) of this section.

[45 FR 17972, Mar. 20, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 292.207, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 292.208 Special requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility only if it meets the requirements of:

- (1) Paragraph (b) of this section;
- (2) Section 292.203(c); and
- (3) Part 4 of this chapter.

(b) A hydroelectric small power production described in paragraph (a) is a qualifying facility only if:

(1) The Commission finds, at the time it issues the license or exemption, that the project will not have a substantial adverse effect on the environment (as that term is defined in § 292.202(q)), including recreation and water quality;

(2) The Commission finds, at the time the application for the license or exemption is accepted for filing under § 4.32 of this chapter, that the project is

not located on any segment of a natural watercourse which:

(i) Is included, or designated for potential inclusion in, a State or National wild and scenic river system; or

(ii) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural or scenic attributes which would be adversely affected by hydroelectric development; and

(3) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(c) For the Commission to make the findings in paragraph (b) of this section an applicant must:

(1) Comply with the applicable hydroelectric licensing requirements in Part 4 of this chapter, including:

(i) Completing the pre-filing consultation process under § 4.38 of this chapter, including performing any environmental studies which may be required under §§ 4.38(b)(2)(i)(D) through (F) of this chapter; and

(ii) Submitting with its application an environmental report that meets the requirements of § 4.41(f) of this chapter, regardless of project size;

(2) State whether the project is located on any segment of a natural watercourse which:

(i) Is included in or designated for potential inclusion in:

(A) The National Wild and Scenic River System (28 U.S.C. 1271-1278 (1982)); or

(B) A State wild and scenic river system;

(ii) Crosses an area designated or recommended for designation under the Wilderness Act (16 U.S.C. 1132) as:

(A) A wilderness area; or

(B) Wilderness study area; or

(iii) The State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development.

(d) If the project is located on any segment of a natural watercourse that meets any of the conditions in paragraph (c)(2) of this section, the applicant must provide the following information in its application: